U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
All Regional Directors for CPD
All CPD Division Directors
All HOME Program Coordinators
All HOME Participating Jurisdictions

Notice: CPD 96-09

Issued: December 20, 1996
Expires: December 20, 1997

Cross References:

SUBJECT: Administrative costs, project-related soft costs, and community development housing organization (CHDO) operating expenses under the HOME Program

I. PURPOSE

This Notice defines administrative costs and project-related soft costs in the HOME Program (24 CFR Part 92), clarifies the distinction between them, and provides guidance to participating jurisdictions (PJs) on how to categorize costs.

II. BACKGROUND

The Cranston-Gonzalez National Affordable Housing Act (NAHA), which established the HOME Program, did not provide authority for PJs to use HOME funds for costs incurred for administering their local HOME programs. On October 28, 1992, the Housing and Community Development Act of 1992 (HCDA) amended NAHA to permit each PJ to use up to ten percent of its total Fiscal Year HOME allocation to defray administrative costs and up to five percent for Community Housing Development Organization (CHDO) operating expenses. In addition, HCDA of 1992 permitted PJs to use a portion of their fifteen percent CHDO set-aside, during the first 24 months of participation in the HOME Program, for CHDO capacity building. The Department implemented these provisions of HCDA 1992 immediately, and incorporated them through amendments to the HOME interim rule published in the *Federal Register* on December 22, 1992, and June 23, 1993.

Under the original HOME regulations, administrative costs were ineligible. These costs were defined as all staff costs, whether for overall HOME program administration or for project delivery. When the statute was amended in 1992 to permit the use of HOME funds for administrative costs, the revised HOME regulations retained the definition of administrative costs and imposed the statutory 10 percent cap on these costs.

In early 1993, the Department formed a task force to review policy inconsistencies between the HOME and Community Development Block Grant (CDBG) programs. As a result of that review, the Department made regulatory changes to the definition of administrative costs under the HOME Program to bring it into conformance with the CDBG program rules. [These changes were included in an interim rule published in the *Federal Register* on April 19, 1994.] Specifically, HUD amended the HOME Program definition of administrative costs. This notice discusses the circumstances under which a PJ might choose each option.

The April 19, 1994 interim rule removed the definition of administrative costs from §92.2 and redefined it at §92.207 as eligible administrative and planning costs. Administrative costs now include all general management, oversight and coordination costs. Project-related soft costs are costs incurred by the owner or the PJ that are associated with the financing and/or development of affordable housing. Staff and overhead costs that are directly related to carrying out a project and/or to provide relocation assistance were redefined and included as both project-related soft costs at §92.206(d)(6) and (f)(2), respectively, and as administrative costs at §92.207(b).

The Multifamily Housing Property Disposition Reform Act of 1994 permitted the use of CDBG funds for HOME general management, oversight and coordination costs, which are analogous to costs eligible under 24 CFR Part 570.206. CDBG funds can be used for HOME project costs, provided the HOME project meets CDBG national objectives.

On September 16, 1996, the Department published a final rule for the HOME Program. The final rule made numerous changes to clarify requirements and ease administration of the program. Among these changes, a new section, § 92.212, has been added to explain the circumstances under which a PJ may incur costs prior to the award of its fiscal year HOME allocation.

III. ADMINISTRATIVE COSTS

A PJ may use up to ten percent of its annual HOME allocation to pay administrative and planning costs for the HOME Program. A PJ may also use up to 10 percent of any HOME program income received during the program year for administrative and planning costs. Allowable administrative costs, chargeable to the 10 percent cap, may be incurred by the PJ, state recipients, or subrecipients. It is up to the PJ to determine how administrative funds are to be allocated among subrecipients or, in the case of State PJs, State recipients.

A PJ cannot charge points on HOME loans and include them in the cost of a loan to repay a PJ's administrative costs. PJs may not charge monitoring, servicing, and origination fees in HOME-assisted projects. However, PJs may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications (§92.214 (b)). Such fees are applicable credits under OMB Circular A-87.

The following are included in the definition of administrative costs, as described in §92.207: (a) general management, oversight and coordination costs; (b) staff and overhead costs; (c) public information costs; (d) cost of fair housing activities; (e) indirect costs; (f) cost of preparing the Consolidated Plan and (g) costs of complying with other Federal requirements. ***Of these costs, it is only (b), project-related or relocation-related staff and overhead costs, and certain costs under (g), other Federal requirements, that a PJ has the option to charge as either administrative costs or project-related soft costs. These will be discussed more fully in Section V. All other administrative costs, as described below, may be charged only to the administrative category:***

<u>General Management, Oversight, and Coordination Costs</u>

General management, oversight, and coordination costs are always categorized as administrative costs. These include staff salaries, wages and other costs related to the planning and execution of HOME activities such as: program coordination, management and evaluation; travel costs incurred for official business in carrying out the program; administrative services performed under third party agreements, such as legal, accounting and audit services; other costs for goods and services required for the adminstration of the program, such as rental or pucrhase of equipment, insurance, and utilities; and the costs of administering tenant-based rental assistance.

By accepting HOME funds, a PJ assumes the responsibility for meeting all HOME requirements over time. To meet this obligation, the PJ will incur administrative costs related to activities such as annual reviews of information on rents and tenant income in HOME-assisted rental properties; post-completion property inspections in accordance with § 92.504(e) during the period of affordability; environmental review, whether program-wide or project-specific; disbursement of HOME funds; and the information and financial management of HOME funds.

HOME funds may be used to pay the cost of providing tenant-based rental assistance (TBRA) to individuals or families (that is, security deposit payments and direct rental assistance to the tenant). However, **costs related to providing TBRA are always administrative costs and never project-related soft costs**.

TABLE 1 includes some examples of general management, oversight and coordination costs.

TABLE 1: EXAMPLES OF GENERAL MANAGEMENT, OVERSIGHT AND COORDINATION COSTS*

- providing local officials and citizens with information about the program
- preparing program budgets and schedules
- preparing reports and other documents related to the program for submission to HUD
- outreach activities
- renting office space and the cost of utilities
- purchasing equipment, insurance, and office supplies
- monitoring program activities to assure compliance with program requirements
- coordinating the resolution of audit and monitoring findings
- evaluating program results against stated objectives in the action plan of the Consolidated Plan
- program or neighborhood wide environmental reviews

** In accordance with OMB Circular A-87, Attachment B, C.2.*

Public information

These are the costs incurred to provide information to the general public about the HOME program, or to residents and citizen organizations to encourage their participation in the planning, implementation or assessment of projects being assisted with HOME funds.

Fair housing

Any activities undertaken to affirmatively further fair housing in accordance with the PJ's certification in its Consolidated Plan are administrative costs.

Indirect costs

Indirect costs may only be charged to the HOME Program under a cost allocation plan prepared in accordance with OMB Circulars A-87 (Cost Principles for State and Local Governments) or A-

122 (Cost Principles for Nonprofit Organizations), as applicable. Indirect costs (such as rent, utilities, maintenance and other costs that are shared among several departments of the PJ) are always categorized as administrative costs.

Preparation of the Consolidated Plan

Because an approved Consolidated Plan is a required under 24 CFR Par 91 for participation in the HOME Program, costs related to its preparation are eligible administrative costs under the HOME Program . This includes the cost of document preparation, public hearings, consultations and publication.

Other Federal Requirements

Generally, the costs of complying with the Federal requirements listed in subpart H of the HOME final rule are eligible administrative costs. Costs for complying with these requirements that are directly related to a project may, at the PJ's option, be categorized as project related soft costs (e.g., project-related environmental costs, relocation payments). Certain costs of complying with the lead-based paint requirements (i.e., lead hazard reduction or abatement activities) qualify as development hard costs under § 92.206(a).

IV. ELIGIBLE PROJECT-RELATED SOFT COSTS

Costs related to the development or financing of HOME-assisted housing are related soft costs of a project and are eligible under the HOME Program, as outlined in §92.206(d). These costs must be "reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds." (As stated earlier, costs associated with a TBRA program are not project-related soft costs.) Some of these costs may be for services required by private lenders. Services charged as project-related soft costs may be performed by a third party, the PJ, a subrecipient, or a State recipient.

Staff and overhead costs that are directly related to a project and/or to costs associated with compliance with other Federal requirements established in subpart H of the final rule can be charged either as administrative costs or project-related soft costs. These will be discussed more fully in Section V.

TABLE 2 illustrates a variety of costs that are eligible under the HOME Program and always categorized as project-related soft costs:

TABLE 2: PROJECT-RELATED SOFT COSTS

★ architectural, engineering or related professional services required to prepare plans, drawings, or specifications of a project

★ to process and settle the financing for a project, such as private lender
t reports, fees for title evidence, fees for recordation and
filing of legal documents, building permits, attor
and fees for an independent cost estimate, builders or developers fees

★ costs of a project audit that the PJ may require with respect to the development of the project

★ an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of rent-up (of a new construction or rehabilitation project) and which may only be used to pay operating expenses, scheduled payments to replacement reserves, and debt service

★ impact fees that are charged for all projects within a jurisdiction

V. PJ CHOICE: ADMINISTRATIVE OR PROJECT-RELATED SOFT COSTS

PJs must choose whether to charge certain costs as project-related soft costs or as administrative costs. Costs eligible under either category fall into two primary areas: (1) staff and overhead costs directly related to carrying out a project, including certain fair housing and housing counseling activities; (2) staff and overhead costs directly related to complying with the other Federal requirements set out in subpart H of the final rule.
Examples of costs under subpart H which can be categorized as either administrative costs or project-related soft costs include: the cost of providing fair housing counseling or other informational services to a HOME-assisted family; the cost of providing advisory and other relocation services to persons displaced by the project; environmental review costs directly related to a HOME-assisted project; and the cost of inspecting units for the presence of lead hazards or

defective paint.

Such costs can be charged either as administrative costs or project-related soft costs, regardless of whether they are incurred by the PJ, a State recipient, subrecipient or third party contractor. However, if these costs are incurred by an owner or developer (including a CHDO) in whose project HOME funds are invested, they can only be charged as project-related soft costs. It should be noted that if a PJ has contracted with another entity (contractor or subrecipient) to perform administrative tasks (including project-related tasks), a PJ must have a written agreement with each entity receiving HOME funds in accordance with §92.504(b).

TABLE 3 helps further identify the types of costs that can be either administrative costs or project-related soft costs:

TABLE 3: ADMINISTRATIVE *OR* PROJECT-RELATED SOFT COSTS

- ★ processing of applications for HOME assistance
- ★ appraisals required by HOME program regulations
- ★ preparation of work write-ups, work specifications, and cost estimates or review of these items if an owner has had them independently prepared
- ★ project underwriting
- ★ construction inspections and oversight
- ★ project document preparation
- ★ costs associated with a project-specific environmental review
- ★ costs associated with informing tenants or homeowners about relocation rights or benefits
- ★ costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by §92.351
- ★ staff and overhead costs, such as preparing work specifications, loan processing,

Consider this example: A developer submits a proposal to a PJ to newly construct several properties for HOME-assisted homebuyers. The proposal includes, among other things, a market feasibility study and an appraisal conducted by the developer. As a prudent lender, the PJ should assess this information by:

1) assessing the project's feasibility and borrower's qualifications,
2) conducting its own credit check for all investors,
3) reviewing architectural plans, work specifications and cost estimates to determine that they meet the PJ's standards, comply with local codes, and that the costs are reasonable, and
4) evaluating the developer's appraisal, or conducting its own, to determine that the project's after-rehabilitation value will not exceed 95% of the area's median purchase price.

Costs associated with this assessment of information can either be administrative costs or project-related soft costs.

When categorizing costs related to the provision of information services (for example, program, project, and fair housing information), PJs must consider who is incurring such costs. When costs are incurred by a property owner, they are project-specific and must be charged to the project. For instance, the affirmative marketing costs incurred by a project owner are costs associated with marketing a specific project for that owner's benefit. On the other hand, when costs are incurred by a PJ, State recipient, subrecipient, or third party contractor thereof, the costs might be categorized either as administrative costs or as project-related soft costs. For example, PJ staff might conduct affirmative marketing for several projects throughout its jurisdiction. It could charge each project individually for these costs, or charge these costs as administrative costs.

Homebuyer or tenant counseling are eligible project-related soft costs. However, staff and overhead costs, and other services related to assisting potential owners, tenants, and homebuyers, may be charged as project-related soft costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project as specified under § 92.206(d)(6).

Relocation Costs

Required relocation assistance costs are eligible costs under the HOME Program. Such costs include relocation payments and other relocation assistance for permanent and temporary relocation of families, individuals, businesses, nonprofit organizations and farm operations where assistance is required to meet a PJ's relocation responsibilities under the HOME Program. (See §§92.206 (f) and 92.353)

There are two types of relocation costs: (1) relocation payments and (2) other relocation assistance, typically, advisory services. Relocation payments are always project costs and include replacement housing payments, payments for moving expenses, and payments for the reimbursement of reasonable out-of-pocket expenses incurred in connection with temporary relocation.

Other relocation assistance means staff and overhead costs directly related to providing advisory and other services to persons displaced by the project, including the provision of timely written notices, referrals to comparable and suitable replacement housing, property inspections, counseling, and other assistance necessary to minimize hardship.

Before categorizing the cost of other relocation assistance the PJ must, again, assess who is incurring the cost. For example, when a property owner or an owner's agent provides advisory services, the cost of such services are project-related soft costs. However, if a PJ, State recipient, subrecipient, or contractor provides such services the costs may be treated as either administrative costs or project-related soft costs.

PJ considerations when choosing administrative or project cost category

Administrative cap vs. maximum per unit subsidy limits

In deciding whether to charge project-related staff and overhead costs to the administrative or project-related soft cost categories, PJs should be aware of the limits that apply in each circumstance. The amount of HOME funds for administrative costs cannot exceed ten percent of the PJ's Fiscal Year HOME basic formula allocation plus program income, as specified at §92.207. This includes project-related soft costs that a PJ chooses to charge to the administrative category. Conversely, when project costs are charged to a specific project as project-related soft costs, these costs are included in the determination of the PJ's per unit cost, which is limited by the maximum per unit subsidy limits, as specified at §92.250.

Match issues

The HOME statute prohibits the recognition of administrative costs as match, even if the costs are paid with non-Federal funds. HOME funds used for administrative expenses of the PJ and for operating expenses of CHDOs do not have to be matched, thus reducing a PJ's overall match liability. Should a PJ charge staff and overhead costs to a project, those costs would trigger the 25 percent matching requirement.

Viability of project

With the exception of CHDO projects that receive project-specific technical assistance, seed money or site control loans, costs (including relocation costs) related to a project that does not go forward to formal commitment cannot be charged to the project. For relocation expenses, any costs for initial notices or other advisory services for a project that is not completed must be charged to the administrative category.

Mandatory relocation services

Because advisory services are not optional services, PJs must budget for these costs. For example, if a PJ is at, or near, its administrative cost cap, relocation advisory services **must** still be provided to tenants and homeowners and it might be advisable for the PJ to treat these costs as project-related soft costs. Alternately, if the amount of HOME funds in a project is at or near the maximum per unit subsidy limit, it might be advisable for the PJ to charge these relocation costs to the administrative category.

VI. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

The HOME Program provides funds specifically for use by nonprofit housing developers that qualify as CHDOs. Each HOME PJ must set-aside a minimum of 15 percent of each annual HOME allocation exclusively for housing that is owned, developed or sponsored by CHDOs. In addition, the HOME Program provides special operating assistance for CHDOs in the form of funds for capacity-building, pass through funds from technical assistance intermediaries and funds for operating expenses.

Section 234 of the NAHA, as amended, limits the amount of operating assistance a CHDO may receive under the HOME Program for any Fiscal Year to an amount that provides no more than 50 percent of the organization's total operating budget in the Fiscal Year or $50,000 annually, whichever is greater. This limitation applies to any combination of capacity building funds, pass through funds from technical assistance intermediaries and operating expense assistance.

When a CHDO administers a program on behalf of a PJ as a subrecipient, any administrative costs incurred by the nonprofit are treated as administrative costs of the PJ; these are not CHDO operating funds. For example, if a CHDO is administering a HOME-funded owner-occupied housing rehabilitation program on behalf of a PJ, the costs incurred by the CHDO may be charged as administrative costs or as project-related soft costs (where appropriate). These costs would not be eligible for HOME funding as CHDO operating expenses. The HOME final rule eliminated the requirement that administrative funds that a CHDO receives in its capacity as a subrecipient be counted under the 50 percent or $50,000 limit.

Operating Expenses

A PJ may use up to 5 percent of its annual HOME allocation for the payment of operating expenses of CHDOs (§92.208). Operating expenses are defined as reasonable and necessary costs for the operation of a community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials and supplies.

PJs may normally provide funds for the operating expenses only of CHDOs that are receiving HOME funds to own, develop or sponsor affordable housing. However, in recognition of the need to support and build capacity of new or expanding CHDOs, the regulation also allows PJs to provide operating funds to CHDOs who are not yet receiving set-aside funds when there is a written agreement between the PJ and the CHDO. The agreement must state that the CHDO is expected to receive CHDO set-aside funds within 24 months of receiving the funds for operating expenses. In addition, it must set forth the terms and conditions upon which this expectation is based.

Project-specific technical assistance, site control loans, and seed money loans

Up to ten percent of the each PJ's CHDO set-aside may be used for activities specified under §92.301, project-specific technical assistance and site control loans, and project specific seed money loans. PJs that reserve more than 15 percent of their HOME allocation for CHDOs may use up to 10 percent of their total CHDO set-aside for such loans. Unlike CHDO capacity building funds, this loan authority is permanently available to PJs.

Loans may be provided to cover project expenses necessary to determine project feasibility. TABLE 4 illustrates such expenses.

TABLE 4: ELIGIBLE PROJECT-SPECIFIC TECHNICAL ASSISTANCE & SITE CONTROL LOAN EXPENSES

- ★ an initial feasibility study
- ★ engineering studies
- ★ consulting fees
- ★ costs of preliminary financial applications
- ★ engagement of a development team
- ★ site control and title clearance
- ★ legal fees
- ★ options to acquire property

Project-specific seed money loans may be made available to CHDOs to cover preconstruction costs the PJ determines to be customary and reasonable. Such costs include obtaining loan commitments, the preparation of architectural plans and specifications, and obtaining zoning or other local approvals.

PJs may waive repayment of these loans, in whole or in part, under §92.301 (a)(3) and (b)(3), if there are impediments to project development that the PJ determines are reasonably beyond the control of the borrower and the project does not go forward. The HOME final rule eliminates match liability for project-specific technical assistance, site control and seed money loans for which the PJ has waived repayment.

These loans cannot be used to pay for administrative costs incurred by the PJ. If the project proceeds and the only HOME funds used are those for project-specific seed money, site control or technical assistance loans, all applicable HOME requirements are triggered for that project.

Capacity building

PJs must reserve or commit CHDO set-aside funds to specific CHDOs within 24 months of their obligation by HUD. PJs are required under §92.300 (b) to make reasonable efforts to identify CHDOs "that are capable, or can reasonably be expected to become capable," of carrying out elements of the PJ's approved Consolidated Plan.

During the early months of their participation in the program, new PJs may be unable to identify a sufficient number of organizations that qualify as CHDOs. Consequently, these PJs may use a portion of their CHDO set-aside for capacity building. If **during the first 24 months of its participation in the HOME Program** (commencing on the date that HUD executes the first HOME Investment Trust Agreement with a PJ), a PJ cannot identify a sufficient number of capable CHDOs, then up to 20 percent of the minimum 15 percent CHDO set-aside (in other words, three percent of the PJ's total allocation) may be made available to develop the capacity of CHDOs in the jurisdiction. This capacity building expenditure cannot exceed $150,000 over the 24-month period.

PJs must commit capacity building funds within 24 months from the obligation date of the HOME Investment Partnership agreement. If set-aside funds are not committed to capacity building within the 24 month period, they must be committed to CHDO projects to avoid being recaptured.

Capacity building funds can be used in various ways: 1) a PJ may contract with an intermediary organization, or other entity, to provide technical assistance to CHDOs, 2) a PJ may provide funds directly to CHDOs to obtain training or technical assistance, or 3) a PJ may pay the costs of CHDO operating expenses, including staffing. However, PJs should be aware that they cannot use capacity building funds to pay their own staff to train a CHDO. This is an administrative cost to the PJ, and capacity building funds may not be used to exceed the ten percent cap on administrative funds.

PJs should assess the types of technical assistance available whether they be from HUD designated intermediary organizations or other technical assistance providers in their area. Capacity building funds should be used to complement, not duplicate, intermediary organizations' and other technical assistance providers' efforts.

Pass-through funds

Through direct contract with the Department, many intermediary organizations provide technical assistance and support to CHDOs and potential CHDOs throughout the country. PJs work closely with these intermediary organizations to identify organizations they wish to work with to develop affordable housing. In addition to technical assistance, these intermediary organizations can also pass through to CHDOs a portion of their contract funds to provide housing education and organizational support.